

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JUNE 21, 2006**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of June 21, 2006, was called to order by Mayor Hitchcock at 5:33 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual litigation: Government Code §54956.9(a); one case; *People of the State of California; and the City of Lodi, California v. M & P Investments, et al.*; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Conference with Blair King, City Manager, and Jim Krueger, Deputy City Manager (Acting Labor Negotiators), regarding Association of Lodi City Employees regarding General Services and Maintenance and Operators, pursuant to Government Code §54957.6

C-3 ADJOURN TO CLOSED SESSION

At 5:33 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:58 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:06 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed that items C-2 (a) and (b) were discussion and negotiation direction only; no reportable action was taken.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of June 21, 2006, was called to order by Mayor Hitchcock at 7:06 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

B. INVOCATION

The invocation was given by Pastor Frank Nolton, New Hope Community Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 Presentations – None

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Johnson, Mounce second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$5,694,955.56.
- E-2 The minutes of May 16, 2006 (Shirtsleeve Session), May 16, 2006 (Special Meeting), and May 23, 2006 (Shirtsleeve Session) were approved as written.
- E-3 Received the report of the disposition of surplus personal property (sale of scrap metal).
- E-4 Approved the sale of surplus overhead all aluminum conductor and related material to Merced Irrigation District.
- E-5 Approved the plans and specifications and authorized advertisement for bids for Well 27 improvements at 2360 West Century Boulevard (DeBenedetti Park).
- E-6 Adopted Resolution No. 2006-112 rejecting the sole bid for 15,000 feet of #1/0 600-volt triplex, approved the revised specifications, and authorized the advertisement for bids for 20,000 feet of #1/0 600-volt triplex.
- E-7 "Adopt resolution awarding the contract for tree trimming (power line clearing) to Trees, Inc., of Houston, Texas (\$350,000)" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar**.
- E-8 Adopted Resolution No. 2006-113 authorizing the City of Lodi to contract for wireless services from Verizon Wireless under the terms of the State of California Contract for Wireless Services (Master Contract #IS-05-58-02).
- E-9 Adopted Resolution No. 2006-114 approving the final map and improvement agreement for the public improvements for 495 North Guild Avenue, directing the City Manager and City Clerk to execute the agreement on behalf of the City, and appropriating funds in the amount of \$13,150 for required reimbursements.
- E-10 Authorized the City Manager to execute amendment to encroachment permit agreement for 115 South School Street.
- E-11 Adopted Resolution No. 2006-115 authorizing the City Manager and designee to execute and file applications for Federal assistance with the Federal Transit Administration (FTA) and all associated activities on behalf of the City of Lodi and authorizing the City Manager, City Attorney, and Transportation Manager to be assigned personal identification numbers for all required FTA Transportation Electronic Award and Management System activities.
- E-12 Adopted Resolution No. 2006-116 authorizing transit services outside of regular service operations for the listed annual events and authorizing the Transportation Manager to advertise to determine if a willing and/or able provider exists for these events in accordance with the Policy for Use of Transit Service Outside of Regular Operations.
- E-13 Adopted Resolution No. 2006-117 authorizing the City Manager to execute an amendment to the contract with Greyhound Bus Lines, Inc. to approve receipt of commission for additional services.

- E-14 Adopted Resolution No. 2006-118 authorizing the City Manager to execute the Direct Payment Program agreement with the State of California Department of Community Services and Development for the term of July 1, 2006 through June 30, 2009.
 - E-15 Adopted Resolution No. 2006-119 authorizing the City Manager to execute an amended and restated Project Agreement No. 5 for the participation in the WestTrans Open Access Same Time Information System.
 - E-16 Adopted Resolution No. 2006-120 amending Lodi Electric Utility Department's rules to parallel the California Public Utilities Commission's rules concerning the amount of liability insurance required for small electrical generators that are interconnected with Lodi's system.
 - E-17 Authorized staff to issue letter of opposition relating to AB 573 (Wolk), which would restrict the types of indemnification clauses that may be included in a public agency contract with a design or engineering professional or firm.
 - E-18 "Adopt resolution waiving fees for house fundraiser by Hutchins Street Square Foundation" was ***removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.***
 - E-19 Set public hearing for July 5, 2006, to consider adoption of ordinance establishing low-income discounts for water and wastewater ratepayers.
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ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- E-7 "Adopt resolution awarding the contract for tree trimming (power line clearing) to Trees, Inc., of Houston, Texas (\$350,000)"

PUBLIC COMMENTS:

- Felix Huerta, business agent for the American Federation of State, County, and Municipal Employees, stated that, based on calculations of salaries and benefits of comparable positions within the market, the City is paying much more than it should to contract out this service and could instead hire seven or eight employees to perform tree trimming. There is a National company based in Ohio that provides the specific training needed to meet the certifications to trim trees around power poles, which has an office located in Lodi. He suggested the City look into whether it could do this in house more efficiently than contracting it out.

Electric Utility Director Morrow responded that contracting for tree trimming services is a standard in the electric utility industry as it results in many cost economies and management efficiencies. In addition to labor and benefits, the contractor also provides vehicles (including fuel and vehicle maintenance), specialized trucks, grinders, and necessary tools. The contract represents a 3.4% increase over last year, which is consistent with general inflation rates.

In response to Council Member Hansen, Mr. Morrow stated that it would be a major undertaking for the City to begin performing tree trimming services in house and would include hiring additional staff, training, management, and accounting services, which would be difficult to do with the existing workforce. Additionally, these skilled workers are trained to operate around high-voltage power lines and their safety drives up the cost.

Council Member Mounce questioned if this was the same company utilized last year, to which Mr. Morrow responded in the affirmative. She commented that she received a complaint from a citizen that the tree trimmers did not identify themselves as being a

contractor for the City of Lodi and she suggested that they be provided with a phone number for citizens to call to verify who they are.

Mr. Morrow assured Council that he would make certain there is proper identification on the vehicles and the contractors, as well as providing information to citizens about who to call with questions. He added that it is far easier to reduce or increase the workforce through the contract as the needs necessitate.

MOTION:

Council Member Beckman made a motion, Hitchcock second, to adopt Resolution No. 2006-121 awarding the contract for tree trimming (power line clearing) to Trees, Inc., of Houston, Texas, in the amount of \$350,000.

DISCUSSION:

Mayor Pro Tempore Johnson stated that the contractors recently trimmed trees on his property and he criticized that the trees were cut back severely, to which Mr. Morrow responded that the trees are trimmed on a cycle and are cut back by three to five years worth of growth.

VOTE:

The above motion carried by a unanimous vote.

E-18 “Adopt resolution waiving fees for house fundraiser by Hutchins Street Square Foundation”

Mayor Pro Tempore Johnson questioned what kind of participation this project has received, particularly in the area of title, escrow, loan, and realtor fees.

PUBLIC COMMENTS:

- Jeffrey Kirst, Vice Chairman of the Hutchins Street Square Foundation, reported that this project represents a change from the Foundation's annual Christmas fundraiser. The Foundation paid the plan check fees up front and purchased the lot from Dr. Kessler and Dave Williams, who provided a substantial reduction in the lot value. Farmers and Merchants Bank waived the loan fee and appraisal fee, Meehleis Modular offered to donate all of the lumber for this house, and the realtor fees were reduced substantially. The Foundation is requesting that the City participate by waiving the permit fees for the house. Anyone interested in participating in this fundraiser was encouraged to call Mr. Kirst at 334-4994.

MOTION:

Mayor Pro Tempore Johnson made a motion, Hansen second, to adopt Resolution No. 2006-122 waiving fees for house fundraiser by Hutchins Street Square Foundation.

DISCUSSION:

In response to Council Member Beckman as to whether or not this would be a gift of public funds, City Attorney Schwabauer responded that these fees are general fund related; they are not fees that would go into an impact fee program, for which this would not be permitted. The Constitution prohibits the gift of public funds, but defines an unauthorized gift of public funds as one that does not further the interest of the community at large. Cases have approved the granting of money to charitable programs, and he believed this would not be a gift of public funds since this money is going to Hutchins Street Square and paying off a debt that is owed on the Square.

VOTE:

The above motion carried by a unanimous vote.

City Manager King explained that this matter was placed on the agenda as it involved a waiver of fees that were established by Council resolution, for which staff does not have the authority to waive.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Jane Lea encouraged citizens to vote yes on Measure H, the water rate reduction initiative, which would repeal the 38% water tax increase and refund residents. The City Council has raised the water rate twice this year, with an additional resolution to increase it for a cost adjustment, despite the 4,000 citizens who protested the rate and the 4,000 citizens who signed a petition to place this measure on the ballot. She encouraged Council to arrive at a solution that would least impact the citizens and suggested the following:
 - 1) Invite the attorneys of the successful groundwater suit in Modesto to speak to the Lodi City Council in an open forum and provide advice and options for Lodi.
 - 2) Sell off the \$1.2 million of water from the Woodbridge Irrigation District to the Central Valley project. Until the City is ready for the water, it could break even.
 - 3) Utilize the sale of the \$2 million worth of copper electrical lines, for which she could not find the revenue listed in the budget. She estimated that sale to be \$500,000 and questioned if it was put toward the clean up.
 - 4) Urged Council to pay only the financial obligations, i.e. the debt service to Hutchins Street Square. The suggestion of reducing the number of police officers by seven is not acceptable. Hutchins Street Square can run the programs it can afford; however, the City has an obligation to provide for health and safety with the tax dollars it collects from citizens. It is more important to provide police and fire protection than to subsidize the private foundation when the City is not fiscally sound. She estimated a cost savings of \$500,000.
 - 5) Increase the property taxes to the new homes going in as part of the development south of Lodi and dedicate those funds toward the groundwater contamination, along with the new tax revenues from Costco. She estimated the revenue to be \$700,000.
 - 6) Dedicate the money generated from the tax revenues from Wal-Mart, estimated at \$1 million, toward the groundwater clean up.
 - 7) Utilize the \$18 million now to begin the clean up, while these other revenues are being generated.

Ms. Lea further commented that the City Council, in 1996 in response to a request from former Council Member Ray Davenport, determined it would not make offices available for Council Members and she questioned why Council Member Hansen was granted use of an office.

- Otis Gladney, representing AAA Motorcycle Escort Services in Sacramento, stated that his company has been providing funeral escort services to the Lodi area for two years and would like to establish a base in Lodi. Mr. Gladney stated that there are other service providers that break speed laws and wear uniforms and ride motorcycles with sirens that are similar to the Lodi Police Department. He presented a draft funeral ordinance (filed) that would provide guidelines to operators and he requested the Council consider implementing it. Mr. Gladney indicated that he has discussed this issue with Police Chief Adams and Sergeant Carillo.

Mayor Hitchcock stated that the matter would be referred to staff.

- David Nielsen thanked the Lodi Police Department and City officials who donated their time and expertise toward the efforts to improve the standard of living on East Locust Street. Due to Brown Act requirements, a number of City officials and Council Members were unable to attend their neighborhood meeting last night, at which the neighbors were presented with a set of tools that the City, Code Enforcement, and Police Department can offer to the residents. The neighbors are determined to continue to meet with the landlords in order to make the apartment buildings safe, secure, clean, and free of gang members. To date, one eviction and one three-day notice has been served and funds will be spent to secure the property and block access to the north alley. Code Enforcement indicated at the meeting that it has difficulty inspecting

rental units from the inside, and Mr. Nielsen reported that the city of Stockton has an ordinance that requires a 24-hour notice. He suggested that City staff contact Stockton for the details and implement the requirements as another tool for Code Enforcement, which would ultimately pay for itself in re-inspection fees and fines. The neighbors, with the help of Congressman Pombo and Senator Boxer, are soliciting federal money to improve the East heritage district, in addition to researching the Patriot Act, which is specifically targeted at gang activity and terrorism. The neighbors hope to involve local churches, Parks and Recreation, the Boy Scouts of America, and other citizens to have painting parties, landscaping activities, and job placement for gang members and the underprivileged. He encouraged citizens to contact locustblockproject@yahoo.com or visit www.seelodi.com to share stories of how residents' lives have been affected by the conditions on these neglected side streets.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Mayor Pro Tempore Johnson shared his concern that Mr. Nielsen and the neighbors may be under the impression that the City is capable of taking over these properties and he urged staff to be clear with the neighbors on what it can and cannot do. The City is not in the business of managing properties and it does not have the money to take this on. Further, Mr. Johnson requested that the issue of Shirtsleeve Sessions be scheduled for a regular meeting to determine what can and cannot be discussed at those meetings.
- Council Member Hansen reported that he attended a follow-up meeting with the Wall Dogs committee and an issue was raised about a potential mural to be painted by local artists. He suggested that the Council consider adopting guidelines on how many murals there should be, potential locations, and parameters in order to maintain the quality. Further, Mr. Hansen reported that he would be attending a Northern California Power Agency meeting in Roseville, at which the members will be discussing and voting to consider the California Municipal Utilities Association greenhouse gas principles. This is an emerging issue dealing with global warming, and discussion will center on whether municipal utilities will support standardized mandatory greenhouse gas reporting from all significant sources. Lodi is much more dependent on base load capacity, and its current energy resources are hydro, geothermal, gas turbines, and its agreement with Seattle City Light. Depending on what direction this goes, it could affect Lodi's ability to control its costs.
- Council Member Mounce recognized Mr. Nielsen for his efforts and stated that she believed he was aware of the City's position that it is not in the business of property management. She further made a third request that the issue of catering trucks and the related land use issues be scheduled for a Shirtsleeve Session. Ms. Mounce invited the community to the fourth annual patriotic picnic on Sunday, August 20 from 4 to 7 p.m. at the Chatfield Range in Clements. Anyone interested in tickets was encouraged to contact Ms. Mounce at 747-0381.

Mayor Hitchcock reported that the issue regarding catering trucks will be forthcoming and will be included with the zoning ordinance discussion.

- Council Member Beckman expressed support for scheduling a meeting to discuss the structure of Shirtsleeve Sessions.
- Mayor Hitchcock agreed that a determination needs to be made on the purpose of Shirtsleeve Sessions and stated that, if Council decisions will be made, they should be conducted at a time when the public can attend or view them on television. She congratulated the Lodi Police Department for assisting a motorist whose vehicle had stalled on Ham Lane, which was going above and beyond the call of duty. In regard to the water rate reduction initiative, ballot arguments have been submitted, and she publicly announced that she was opposed to the initiative. She respected the public's right to circulate a petition, but the City is faced with a \$45 million bill to clean up the water, which is vital to protect the drinking water for future generations. The state has mandated the clean up, and if the City does not rectify the situation, it will be faced with higher fees and fines. The City held numerous public hearing on how to pay for this, and many people, at the conclusion of the hearings, admitted they did not want the rate increase but recognized that there were no other options for raising the funds.

The rate increases will provide the \$45 million needed to clean up the water, and it appeared to be the least painful method. The expectation was to collect more from the responsible parties; however, many of the property owners had purchased the land long after those who polluted it had moved out. She encouraged the public to vote no on Measure H.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

None.

I. PUBLIC HEARINGS

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider resolutions adopting Final Engineer's Annual Levy Report for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, Fiscal Year 2006-07, and ordering the levy and collection of assessments.

Wally Sandelin, City Engineer, reported that, following the public hearing, it was recommended that Council adopt a resolution approving the final annual Engineer's Report and a resolution ordering and levying the collection of the assessments. Over the past several years, Council has enacted resolutions that created 12 zones in the landscape maintenance assessment district. The activities funded by the district include landscape and irrigation, maintenance, masonry block walls, street and parkway trees, and public park areas. The activities and the levies vary by zone and were presented in the final annual Engineer's Report (filed).

Council Member Hansen questioned if the City has received any comments from the property owners and if they have an opportunity to vote on whether or not the assessment continues now that the developer does not control the property.

Mr. Sandelin responded that the action by Council established both the activities of the district and a maximum levy that could be assessed against each individual parcel. There is a built-in factor that increases it, which is either the Consumer Price Index (CPI) or 5% annually, whichever is greater. After the district is formed, the property owners do not have a say in whether or not the assessment can be levied. In the three years since the property owners have been paying individual assessments, he has received a total of three inquiries, and once it was explained, most recalled that it was disclosed in the sale documentation.

Council Member Hansen questioned what course of action a property owner has if they are unhappy with the services for which they are paying, to which Mr. Sandelin replied that they could complain to the City Council or they could band together and attempt to overturn the district; however, former City Attorney Randy Hays had determined that legally there was no way to reverse the district.

City Attorney Schwabauer stated that there is most likely a method for reversing the district; however, there would be repercussions. The obligation to maintain the service would continue to exist, but it would have to be done another way.

Mayor Hitchcock questioned what the residents could do if they were dissatisfied with the service being delivered.

City Manager King stated that the City is operating under the Lighting and Landscaping District (LLD) Act of 1972, which is a benefit assessment district. The purpose of the Engineer's Report is to establish a nexus between the amount paid and the benefit received, and the property owners who pay have the right to see how much money is to be spent upon the improvements. On an annual basis, the City conducts a hearing to allow the public to comment on the issue. The establishment of an LLD is a condition of approval

for the subdivision map; if the LLD should cease, the subdivision would be in violation of the conditions of approval. The Parks and Recreation Department is primarily responsible for maintenance of the parkway strips and it must account for the time and money spent in order to verify that it is consistent with the Engineer's Report. Residents in the LLD pay a premium for the maintenance and receive a higher level of service.

Council Member Hansen agreed that these property owners pay a premium and he wanted to be assured that the City is meeting its obligation and that the property owners understand that now would be the time to report any problems or concerns. Mr. Sandelin stated that the properties in the LLD have weekly service; whereas, to meet budget restrictions, the landscape maintenance in other areas is every other week.

Public Works Director Prima clarified that property owners would have a vote if the City elected to increase the assessments above the indexed amount. If the property owners voted against the increase, the amount would remain the same and the City would perform the level of maintenance it could afford.

Council Member Beckman believed that the property owners could, if they got together, undo the district and he requested that the City Attorney research this matter.

MOTION:

Council Member Beckman made a motion, Mounce second, to adopt the following resolutions:

- Resolution No. 2006-123 approving the Final Engineer's Annual Levy Report for the Lodi Consolidated Landscape Maintenance District No. 2003-1, Fiscal Year 2006-07; and
- Resolution No. 2006-124 ordering the levy and collection of assessments within the Lodi Consolidated Landscape Maintenance District No. 2003-1, Fiscal Year 2006-07.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

VOTE:

The above motion carried by a unanimous vote.

- I-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider the appeal from Mohammad Dawood Khan and Rehana Khan regarding the requirements of a Notice and Order to Repair dated April 19, 2006, for the property located at 505 E. Pine Street (APN 043-170-03).

MOTION / VOTE:

This appeal was withdrawn by the appellants; no Council action was taken on this matter.

J. COMMUNICATIONS

- J-1 Claims filed against the City of Lodi – None

- J-2 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Mounce, Beckman second, unanimously directed the City Clerk to post for the following vacancies:

Greater Lodi Area Youth Commission

Ali Asghar Term to expire May 31, 2007

Andrew Slater Term to expire May 31, 2007

J-3 Miscellaneous

- a) Interim City Clerk Perrin presented the cumulative Monthly Protocol Account Report through May 31, 2006.

K. REGULAR CALENDAR

K-1 "Introduce ordinance enacting the Fire and Facilities Sales Tax initiative"

City Attorney Schwabauer reported that the City Council previously acted to place this matter on the November 7, 2006, General Municipal Election ballot. The issue now before Council is whether or not it will adopt the subject ordinance before it goes onto the ballot; however, it would not become effective unless it is passed at the election. The City is not required to pass the ordinance, but not doing so puts the City at severe risk. The California State Board of Equalization (BOE), which collects both the Bradley-Burns and the transactions and use tax, has opined that the only way to pass a special tax is for the legislature to first pass it by a two-thirds vote and to secondly place it on a ballot for citizen approval. The BOE has stated that, if the approved method is not followed, it will find the City in violation of its tax agreement and will discontinue collecting the existing sales tax and cede it to the county. The City presently collects \$10.4 million in sales tax. If the Council chooses not to pass the ordinance, the City would be forced to sue the BOE when it refuses to collect this tax, if passed at the election, as well as the existing sales tax. The only option is to adopt the ordinance in order to protect the existing sales tax. The voters would then have the final decision as to whether or not the tax becomes effective. Mr. Schwabauer stated that, in the Council's packet, was a copy of the BOE's opinion on this issue (filed).

Council Member Beckman expressed his resentment at being forced to adopt something against which he will be voting at the election. He stated that he would be abstaining from the motion without having a conflict, for which his vote would be counted as an affirmative.

Council Member Hansen shared Mr. Beckman's frustration at being forced to approve this ordinance; however, he stated the risk was too high and that he would be voting in favor of the ordinance.

Council Member Mounce stated that she believed Measure G would be good for the citizens of Lodi and that she would be supporting the measure.

MOTION:

Council Member Mounce made a motion, Hitchcock second, to introduce Ordinance No. 1780 imposing a transactions and use tax to be administered by the State Board of Equalization and adding Chapter 3.09 to the Lodi Municipal Code to be effective April 1, 2007, if approved by the voters at the November 7, 2006, General Municipal Election.

PUBLIC COMMENTS:

- Ann Cerney questioned when the ordinance would go into effect, to which Mr. Schwabauer responded that it would become effective in July 2007, if it is passed by a two-thirds vote in the November election.

DISCUSSION:

Mayor Hitchcock clarified that the City Council is not voting for or against the Fire and Facilities Sales Tax initiative; it is only voting to introduce the ordinance as required by the BOE.

VOTE:

The above motion carried by a unanimous vote.

NOTE: Council Member Beckman abstained from voting on this matter without stating a reason, and in accordance with Lodi Municipal Code Section 2.04.140, his silence was recorded as an affirmative vote.

RECESS

At 8:35 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 8:46 p.m.

K. REGULAR CALENDAR (Continued)

- K-2 "Adopt resolution implementing the treatment and direct utilization of the surface water supply from the Woodbridge Irrigation District contractual allotment and authorizing solicitation of proposals for technical studies of implementing this option"

Public Works Director Prima reported that the staff recommendation is to proceed with action to directly use water in a treat and drink mode and he provided a summary for the reasons for this recommendation:

- Supply diversification
- Sustainable practice
- Improvement in wastewater quality
- Recommended by experts involved in this field
- It is the best option from a legal standpoint

An opportunity arose for a site at Micke Grove for recharge that could be obtained at a low cost. To collect the water for recharge and pump it back into the system, the City would need to build a transmission main of three miles of pipe in the public streets. In addition, approximately five wells would be required to recover the water, and this well field would be located in north Stockton. This project is currently on hold due to the fact that the leaseholder of the property has determined not to proceed with the testing in order to plant his grapes; therefore, there is no further test data than what was available eight weeks ago. Staff discovered that there was one test well in the area that uncovered high levels of nitrates, dissolved solids, and bacteria. The area is also impacted by dibromochloropropane, and the wells at Micke Grove have treatment units. The water quality in the Lodi area is generally better than the groundwater in the surrounding area. Staff is concerned that, if the City moved outward to areas that have higher levels of total dissolved solids in the groundwater, the City's levels would increase as well.

In the absence of having an individual site to study, some basic assumptions were made on land costs. Mr. Prima provided a range of figures from as low as \$30,000 per acre to as high as \$300,000 per acre. For a potential 88-acre basin, the total cost to purchase land could range from \$2.6 million to \$26 million. To lease land, staff estimated a low cost of \$200 per acre per year to a high cost of \$750 per acre per year, which would equate to a total cost range of \$1.6 million to \$3.5 million for a 40-year lease. It was noted that there may be additional costs associated with a lease to compensate the land owner for improvements made the property (i.e. clearing property, removing improvements, etc.). One area of concern with a lease agreement is the potential to have an unwilling property owner and how the City might respond in such a case.

There are a number of alternatives along the west side for a water treatment plant for a direct use alternative that would be on adjacent land to the City or along properties that the City owns. Each alternative has positives and negatives and would need to be studied further to determine a final cost estimate. At this point, without having a final design, site, or associated environmental reports, it is difficult to provide a total cost estimate for the project; however, staff estimates the cost to be \$30 million based on visits to other plants.

Many communities are changing to a combined groundwater and surface water system. The ability to use surface water during wet years and groundwater in dry years is now a standard in the industry and was recently recommended in the State of California's Water Plan Update. Staff strongly supports the option of a direct use treat and drink method.

Mr. Prima reported that the Council received a letter from Mark Madison with the City of Stockton Municipal Utilities (filed), in which he shared information regarding Stockton's decision to move forward with a surface water plant and the advantages of having control over its own project.

Anders Christensen, Manager of the Woodbridge Irrigation District (WID), reported that the WID board of directors supports the City Council moving forward with the treat and drink option. The 10 million gallon per day treatment plant represents the highest and best use of water. The water that was contracted under the 2003 water agreement between WID and the City of Lodi comes from pre-1914 water rights, which have the highest rights in the State of California and are subject to special protections from state legislative control. He reported that the WID passed a resolution of authorization to enter into negotiations with the City of Lodi to extend the current 40-year agreement to September 30, 2047. There is a provision to renew the agreement, and he believed that the WID would extend it given the past history of the district. The WID board took this action because it wanted Lodi to succeed in implementing a treat and drink option strategy that would increase the total drinking water supply to the City of Lodi. Under the treat and drink option, 100% of the water delivered to the City of Lodi would be used; none would be lost to migration, evaporation, or recharge within the system. If Lodi were to consider other water supply options, it would need to increase the groundwater recharge option by 30% to obtain the same result. The sound investment would be to construct the proposed 10 million gallon per day treatment plant as a long-term benefit to the citizens. Cost should not be the sole determinant. He stated that the percolation site at Micke Grove could not be tested because the storm water on which the site was located would not percolate through the soil. Mr. Christensen announced that the WID is near completion on its \$15 million dam and fish ladders project and is beginning the final design of a \$3 million fish screen project to be constructed this fall. These projects will help to enhance the future water rights of WID and its partners, including the City of Lodi.

In response to Mayor Hitchcock, Mr. Christensen stated that the WID board has taken action authorizing the amendment of the language in the 2003 water agreement. Once the final language has been reviewed by staff, it will be brought before Council for action, after which it would be returned to the WID board for approval.

Mayor Hitchcock questioned if the costs were figured into the agreement and expressed concern that the City would be making a \$30 million investment and 40 years later could be held hostage by the costs. Mr. Christensen responded that the terms of the 44-year agreement were clearly spelled out and included the costs.

In response to Council Member Hansen, Mr. Christensen stated that the City of Lodi would have first right of refusal during the agreement period and would have a strong legal standing to renew the agreement based on its investment in the system. The four-year extension is in both time and water and would continue under the same terms. The water banked is water that has been pre-paid, and the City would get it all back when it begins to take the water.

Council Member Beckman stated that the City pays for 6,000 acre feet of water per year, which would equal 240,000 acre feet at the conclusion of the 40-year agreement, and he questioned if the City was guaranteed to receive that amount of water from WID.

Mr. Christensen stated that the City would receive all of the water it is entitled to and has paid for under this agreement. The 6,000 acre feet per year over 40 years would be 240,000

acre feet, and the extension of the agreement would expand it by 24,000 acre feet of water per year; therefore, the City would receive 264,000 acre feet during the 44-year period.

Council Member Beckman was under the impression that the City was not entitled to a full 6,000 acre feet each year, that it was dependent upon wet and dry years, and that there was no guarantee the City would recoup the entire allotment if it were shorted in a dry year.

Mr. Christensen confirmed that, under the provisions of the contract, water not taken in one year could be made up in another year.

Council Member Beckman questioned if WID would consider making the 6,000 acre feet a permanent entitlement or water right to the City of Lodi, particularly if Lodi invests in a water treatment plant, to which Mr. Christensen replied that the agreement states the amount of water it can put forth and that WID cannot issue water rights.

Dr. Mel Lytle with the San Joaquin County Water Resources Division provided a perspective on how Lodi and the new treatment plant would fit into the county. As a result of the lack of surface water in the county and the over reliance on groundwater, the basin in the eastern part of the county is critically over drafted. There is also saline intrusion moving in from the western part of the Delta. The most recent groundwater modeling, going out to the year 2030, illustrates that the situation will continue to worsen if nothing is done. Because of this, agencies in the county, the water districts, and cities have coalesced into a more consensus-based organization to resolve some of these issues. One of these organizations is the Northeastern San Joaquin County Groundwater Banking Authority (GBA), which is comprised of 11 member agencies, including the City of Lodi, and is devoted to meeting the water supply challenges facing the county. In its groundwater management plan for the eastern basin, it recognized one of the best uses for water was utilizing it when it was available and storing or using it directly during dry years. It is very beneficial when agencies and cities work together to meet their needs locally, and he supported the agreement between Lodi and WID. Using surface water for the treat and drink scenario is a sound idea, and Dr. Lytle pointed to a number of local projects as positive examples. The ability to use pre-1914 water rights is a rare opportunity and gives Lodi an opportunity to improve water quality by using the surface water supply, as well as to improve wastewater quality. This option is also in line with greater regional objectives in improved groundwater basin management, which will become a critical issue over time. Without it, the basin will continue to decline and saline intrusion will be required. Modeling shows that additional flows will change in Lodi and will come from a more westerly direction, which would cause greater water contamination problems.

Mayor Pro Tempore Johnson questioned if Dr. Lytle would be in favor of a joint venture between the city of Stockton and the City of Lodi, to which Dr. Lytle responded he was not proposing that; however, he believed that both municipalities were on a course to develop water treatment plants that would give each ownership, flexibility, and control over their water supplies and he supported integration among agencies.

Stan Ferraro, representing California Water Service Company, who also serves as a board member on the GBA, reported on the experiences his company has had regarding groundwater and surface water supply. The California Water Service Company serves 500,000 customers throughout the state, including the cities of Bakersfield and Stockton, and has partnered with Stockton on its Delta water supply project. He shared that Bakersfield was faced with a similar decision ten years ago on whether or not to rely on groundwater supplies to be the primary source. The community also had contamination issues from both naturally and non-naturally occurring contamination. The decision was made to use surface water supply and to treat and provide it directly to the customers. A treatment plant was completed three years ago, which was twice the size of Lodi's proposed plant, and the cost for the project, including infrastructure, extension of

transmission facilities, and intake structures, was in the \$50 million to \$55 million range. He believed that the \$30 million estimate for Lodi's plant was a reasonable cost figure. He cautioned that, if more surface water is put into the ground, it will become susceptible to the same problems as the present groundwater supply (i.e. contamination); therefore, it is advisable to use the high quality surface water from WID, treat it, and use it directly.

Dan O'Hanlon, attorney with Kronick Moskowitz Tiedemann & Girard, presented potential legal implications on the alternative uses of the water and the implication of how the City deals with the water once it is acquired from WID. The law allows direct use of water for beneficial use or storing it in the aquifer through recharge for later consumption for the same beneficial use. He opined that the direct use approach (i.e. treating it and using it directly) is the most protective of the City's right to use the water. The essential difference in the legal implications of the two approaches arises from what happens with the water under each approach. Direct use diverts the water from the WID facility, runs it through the plant, and uses it directly, over which the City maintains control. With recharge, the water is stored in the aquifer that is used in common with many other users. The aquifer in this region is in over draft, which means that more water is being pumped out than is being put back in. It is not a basin that has been adjudicated where the rights to use the aquifer have been determined by a court with rules as to who can pump how much; therefore, any one who has a right to pump from the aquifer can do so. In the direct use option, municipal use is determined as a beneficial use of water, and the City would use its full 6,000 acre feet with no loss factor to the City. Under California water law, the City would not lose its full rights to the existing level of groundwater use if it were to switch to surface supply. The reason the legislature adopted this law was to encourage parties, which were using groundwater, to diversify their source and use surface supply without fear that they would lose their rights to the groundwater. The City would have a right to claim the amount that was added to the aquifer; however, there are a number of complications in that others are free to pump from the aquifer without limitation based on their rights to pump groundwater, in addition to the loss of water due to recharge. This opens the door to disputes on rights and how much is lost to recharge. Sorting out the rights would be done in groundwater adjudication; however, it is time consuming, complex, expensive, and the outcome is uncertain. In addition, there are also implications related to water supply planning. As a result of recent legislation and case law, there are increasing demands on water providers and land use planning agencies to show that there will be water to supply the future needs of the City and future development. By diversifying the supply and using both groundwater and surface supply, the City would improve its water supply reliability and provide a sounder basis for the required water supply planning. Mr. O'Hanlon concluded that, from a water rights perspective, the direct use best protects the City's rights to use the water that is purchased from WID and meets its other obligations.

Council Member Hansen stated that riparian rights arise out of ownership of land that abuts a stream, lake, or pond and he questioned if the City had such a right, to which Mr. O'Hanlon responded that the City's use of water from groundwater wells for municipal uses is defined by the courts as being an appropriative right. Owners of land that abut a stream or lake would have rights to use that water for their purposes.

In response to Council Member Hansen regarding the aquifer, Mr. O'Hanlon stated that there is much uncertainty regarding what one's rights are to the water in the aquifer. The City would be in competition with many other users of the aquifer, and there would be rules for priority in determining the rights of each user. The advantage of using the water directly is that the City receives the full benefit.

Mr. Hansen questioned if selling off some of the water in the future would jeopardize the City's legal standing, to which Mr. O'Hanlon responded that the law allows for transfers of water, which are subject to a number of contingencies. Water transfers are increasingly

common in California, can be temporary, and can be done in such a way that would allow the City to later claim the water when it is needed.

Council Member Beckman stated that the City has been an appropriative user for a long time and questioned what kind of rights that provides the City. Additionally, he questioned if the City, as a municipal user, were to compete with an agricultural user, which one would the courts consider a higher end best use.

Mr. O'Hanlon stated that the City would have senior rights over another user that made a later use of the water. The water code states that domestic use is the highest use, with irrigation being second. Once rights are established, the priority system takes hold; although, it is subject to change over time depending on average use and other factors.

Mr. Beckman stated that, as a domestic user, the City of Lodi would have good standing to maintain and hold onto what it has been doing in the past, to which Mr. O'Hanlon pointed out that the demand exceeds the available supply of water in the basin. If there were adjudication, there would be an allocation of shortages, and the City would not be guaranteed that it could continue to use all that it had in the past. Mr. Beckman added that the basin has been over draft for 80 years.

In response to Mayor Hitchcock, Mr. O'Hanlon explained that some rights, such as riparian rights, are tied to the land; however, appropriative use is not.

Mr. Prima stated that there are a number of studies that would need to be completed before embarking on the treat and drink option in its final form: evaluation of the processes, pilot study on the water for best treatment method, determination of costs and financing plan, site assessments, and environmental reports and other regulatory actions. Staff will include in its assessment the possibility of collaborating with other agencies. He requested that Council authorize staff to proceed with the necessary studies, after which staff would return to Council with the specific costs and related information. Design and construction would potentially be a four-year process.

There is the potential of doing recharge on storm water, rather than discharging it and giving it back to WID, and the potential exists in working with the North San Joaquin Water Conservation District (NSJWCD) to accomplish that. The NSJWCD has also offered to provide water in wet years that the City could treat and drink, and staff will be evaluating that option.

In response to Mayor Hitchcock regarding the downside of a treat and drink option, Mr. Prima stated that there would most likely be a change in the taste of the water. As part of the pilot study, tests will be conducted to ensure there are no interactions between the groundwater and surface water, because the two will be blended. There will be chlorine residual in the system; although, it may not be necessary to disinfect the entire supply with chlorine. Staff intends to study in more detail the potential use of UV or other treatments to disinfect the water, allowing just enough use of chlorine to satisfy the state requirements. In regard to the costs being absorbed by new development, this would cost more in the long run than staying with groundwater. The issue of the long-term potential for groundwater contamination and the need for additional treatment units on the wells has not been addressed as those costs are speculative at this time.

Mayor Hitchcock questioned if there would be a rate increase to pay for the plant, to which Mr. Prima responded that there would be a financing mechanism to get the capital needed to build the facility, which would be paid back through connection fees. With adoption of the plan, staff would return to Council with the next fee update to increase the connection fees to the new users in order to begin building up the cash. The financing plan would indicate whether the rate structure and the anticipation of development could support the necessary financing. There is the potential for rate increases to deal with the operating and

maintenance costs, but he did not anticipate that happening for at least two to four years, other than impact fees. No money would be used from the PCE/TCE clean up fund, and impact fees would be used to pay for the studies as those funds are available to address new growth.

In response to Council Member Beckman, Mr. Prima stated that four years is the timeframe to do the necessary studies, design the project, and build it, which would also be the timeframe that any rate adjustments would be implemented. He suggested that any rate increase be phased in and he assured Council that staff would routinely report on the project in total, including the potential for a rate increase. He added that there is concern that the Environmental Protection Agency will implement new regulations in the near future that would require groundwater to be chlorinated.

In response to Council Member Hansen regarding buying land versus leasing, Mr. Prima stated that owning the land would give the City an asset until it was sold, at which time it would either recoup its cost or make a profit.

Mr. King stated that there would be a large front-end cost and it would most likely be a land based assessment against new development. He added that the City has explored the option of selling off some of the WID water that the City is not using; however, it was unsuccessful in securing interest from a purchaser.

Council Member Beckman believed that it would be a misuse of public funds to purchase land for a water treatment plant when the agreement with WID is for only 40 years with no guarantee that it would be extended. He also did not agree with building a water treatment plant on leased land. With the City's current financial condition, cost needs to be one of the main concerns in the decision factor.

Council Member Mounce questioned how the City's present financial condition would affect the rate it would receive on a Certificate of Participation, to which Mr. Prima responded that the details on the financing have not been analyzed at this point.

PUBLIC COMMENTS:

- Chuck Easterling questioned if WID has a guaranteed flow and some type of water right on the Mokelumne River since Camanche Reservoir and Pardee are controlled and owned by East Bay Municipal Utility District (EBMUD). He further questioned if the City could have filed for riparian rights in 1906 when it was incorporated and whether or not it currently has rights to the river.

Mr. Prima responded that WID's rights on the river pre-date EBMUD's rights, which did not get onto the river until the 1920s. The water rights and subsequent appropriations have been embodied into a series of agreements between WID and EBMUD, which have been incorporated into the City's agreement. In dry years, the City may be cut back in its water allotment; however, it is put back into the bank and utilized in a later year. Riparian rights only apply to land that is adjacent to the river, and the City, with the exception of Lodi Lake, does not own land on the river; therefore, it does not have the ability to claim a riparian right.

City Attorney Schwabauer pointed out that riparian rights are for use on the riparian property; not for export to other properties (i.e. the City could only use it for irrigation needs on the Scenic Overlook or the park, but not for the City's municipal needs).

In response to Mayor Pro Tempore Johnson, Mr. Christensen stated that the WID has been cut back only twice.

- Dennis Alexander stated that a number of chemicals have been applied in the vineyards on the Micke Grove property and other vineyards up to the Camanche, which runs the risk of contaminating the aquifer. He provided information to the Council regarding a \$100 million water bond issue in Placer County (filed) and suggested that staff contact Jenine Windeshausen, Placer County treasurer, to obtain information on this financing option. He further suggested privatizing the operation by selling limited partnerships at a fair returned interest and having development pick up costs. After 10 to 15 years, the cost of the plant would be built by private individuals in less time and cost.
- Kevin Gaither stated that this is a public safety issue and that, over cost and taste, the City's primary obligation is to provide the safest water for this community that it can. Treated water is safer than contaminated groundwater. He suggested the Council take the advice from the experts who spoke this evening and support the treat and drink option.
- Ann Cerney, speaking on behalf of the Citizens for Open Government, stated that adequate time should be allowed for the NSJWCD to complete its groundwater study before the City expends funds for a treatment plant. The property tax payers in the NSJWCD have assessed themselves and want the study to be done. The City at this time has bankable rights and there would be no detriment to waiting.

Speaking on her own behalf as a City resident, Ms. Cerney stated that she endorsed the concept of applying the 6,000 acre feet of water from WID to recharge the water basin either directly or indirectly; however, any expenditure going forward at this time to facilitate the construction of a water treatment plant is premature. She believed that there was not enough available water to sustain the proposed developments, which would result in an additional 3,414 residential units and an additional 16,070 acre feet of water needed to meet the demand. She encouraged Council to slow down the rapid movement of this project and allow time for citizen input and participation.

Mayor Hitchcock stated that for years the City advocated groundwater recharge and it purchased the WID water with that in mind, yet suddenly the direction has changed to the treatment facility. She questioned if this change resulted from the state's requirement to have sufficient water for growth and development.

Mr. Prima stated that changes in state law over the last few years have attempted to link water and development. In 2003 when Council approved the agreement with WID, this law was in place; however, there were no large developments planned at that time, which would trigger the requirement for a water supply assessment. The General Plan states that the City will continue to pump groundwater and will work with other agencies to get more water in the county. The WID agreement provided a window of opportunity for a long-term deal. At that time, he had suggested injecting the water into the ground. Staff studied the options of treatment plant, injection, and surface recharge, and it became clear that the injection method was as expensive as building a treatment plant. Additionally, it did not make sense to treat the water to drinking water standards, inject it into the ground, and then pump it back out. There is an opportunity with these large-scale developments to finance this capital project, and if this decision is delayed 10 to 20 years, the City may not have the same chance and may be forced to mitigate excessive groundwater use.

Mayor Hitchcock questioned if groundwater recharge would accommodate the growth, to which Mr. Prima stated that there are uncertainties in using a basin that is over drafted, particularly if the City is relying on a source that it has already admitted is inadequate. Mr. Prima presented a slide (filed) demonstrating the estimated shortage of water in comparison to the City's growth going out to the year 2030.

- Dennis Alexander stated that in 44 years the City of Lodi would have spent \$54 million for water that it is not going to use.

Council Member Hansen stated that he supported the treat and drink option because the City is paying \$1.2 million a year for the water and he wants to ensure that every drop of it goes to the citizens of Lodi.

MOTION #1:

Council Member Hansen made a motion, Johnson second, to adopt a resolution implementing the treatment and direct utilization of the surface water supply from the Woodbridge Irrigation District contractual allotment and authorizing solicitation of proposals for technical studies of implementing this option.

DISCUSSION:

Mayor Hitchcock stated that her decision comes down to cost and she expressed concern that, due to the City's current financial position, it would fall onto the ratepayers. She was in favor of pursuing a lease for a groundwater recharge project.

Council Member Beckman stated that cost is incredibly important and he would not support a water treatment plant. When the WID water agreement came before Council, he reluctantly voted in favor of it, but only because it would go toward recharge. Had he known the City would not be recharging the water and that it would instead build a water treatment plant on a 40-year agreement in addition to paying \$200 an acre foot for water, he would not have supported the agreement.

Council Member Mounce stated that she supported the treat and drink option; however, she expressed concern about funding this from the water fund, particularly with the water rate reduction initiative on the November ballot, and she could not support this until the outcome of Measure H is known.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Members – Hansen and Johnson

Noes: Council Members – Beckman, Mounce, and Mayor Hitchcock

Absent: Council Members – None

MOTION #2 / VOTE:

Council Member Hitchcock made a motion, Beckman second, to implement utilization of the surface water supply from the Woodbridge Irrigation District contractual allotment for groundwater recharge. The motion **failed** by the following vote:

Ayes: Council Members – Beckman and Mayor Hitchcock

Noes: Council Members – Hansen, Johnson, and Mounce

Absent: Council Members – None

MOTION #3:

Council Member Beckman made a motion, Hitchcock second, to direct staff to study groundwater recharge proposals and return to Council with direction and/or information to pursue recharge.

DISCUSSION:

Council Member Hansen stated that he would be voting against the motion. He agreed with Council Member Mounce's comment that Council wait until the outcome of the water rate reduction initiative on the November ballot.

Mayor Pro Tempore Johnson suggested that Council put a definitive timeline on this to ensure it comes back to Council as the City is wasting an asset by not utilizing the \$1.2 million of water each year.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Members – Beckman and Mayor Hitchcock

Noes: Council Members – Hansen, Johnson, and Mounce

Absent: Council Members – None

City Manager King made the following suggestions, which would gather further information for both the recharge and treat and drink options:

- Staff begin the process of identifying sites that would accommodate recharge;
- Proceed in developing whether it is a treat and drink or recharge method;
- Prepare a model of financing that would show how the City would pay for recharge and recovery of water, as well as a treatment facility; and
- Schedule this matter to come back before Council following the November election.

Mayor Pro Tempore Johnson added that he would like staff to pursue the possibility of a joint venture that could help with the costs.

Mayor Hitchcock stated that she was not interested in a joint project; however, she expressed support for receiving the financing information.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

Council Member Beckman made a motion, Hansen second, to continue with the remainder of the meeting following the 11:00 p.m. hour. The motion **failed** by the following vote (2/3 vote required):

Ayes: Council Members – Beckman, Hansen, and Mayor Hitchcock

Noes: Council Members – Johnson and Mounce

Absent: Council Members – None

K. REGULAR CALENDAR (Continued)

K-3 “Adopt resolutions approving the 2006-07 Financial Plan and Budget and the 2006-07 Appropriations Spending Limit” was ***pulled from the agenda pursuant to the above vote.***

K-4 “Adopt resolution affirming July 1 opening and October 1 closing date for filing applications for residential allocations under the Lodi Growth Management Ordinance” was ***pulled from the agenda pursuant to the above vote.***

K-5 “Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and various other cases being handled by outside counsel (\$15,561.48)” was ***pulled from the agenda pursuant to the above vote.***

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:32 p.m. in memory of Javed Khan, who was a vibrant and active young man who attended Lodi community schools and was a long-time member of the Lodi Boys and Girls Club.

ATTEST:

Jennifer M. Perrin, Interim City Clerk